

## Ex-Files: Retain or Return a Former Client's Files?

On December 1, 2015, the Appellate Division, First Department ruled that a law firm need not release its client's litigation files "without first assuring payment for legal services was made or secured, and in the absence of any waiver or exigent circumstances." *American Stevedoring v. Red Hook Container*, 651472/12, NYLJ 1202743888018, at \*1 (App. Div., 1st, Decided December 1, 2015).

The client, American Stevedoring, an operator of port facilities in Red Hook, Brooklyn, dismissed its law firm during a lengthy litigation. The law firm refused to release the client's litigation file without being paid what the firm claimed was over \$500,000 in legal fees. The law firm also sought payment for the expense of assembling and turning over the file, arguing that the file comprised tens of thousands of pages and that assembling it and turning it over would cost in excess of \$5,000.

The Commercial Division, New York County, granted a charging lien in favor of the firm but rejected a retaining lien, ordering that the file be turned over to the client within ten days and denying the firm's request for payment or security before turning over the file. The firm sought and obtained a stay of the order a few days after it was entered and appealed.

On appeal, the firm argued that it was entitled to a retaining lien on the file and that replacing its retaining lien with a charging lien supplanted a secured position with a contingent one (that is, a lien only on any recovery ultimately obtained), and as such, unfairly prejudiced the firm. The Appellate Division agreed and reversed.

In reversing the Commercial Division and granting the law firm a retaining lien, the unanimous panel cited three First Department cases, *Wankel v. Spodek*, 1 AD3d 260 (1<sup>st</sup> Dept. 2003) (holding that the award of a charging lien does not preclude an attorney from asserting a retaining lien, as these remedies are not exclusive but cumulative); *Schneider, Kleinick, Weitz, Damashek & Shoot v. City of New York*, 302 AD2d 183, 186-187 (1<sup>st</sup> Dept. 2002) (discussing three remedies available to a discharged law firm to recover the value of its legal services: the retaining lien, the charging lien, and an action in *quantum meruit*); and *Corby v. Citibank*, 143 AD2d 587, 588 (1<sup>st</sup> Dept. 1988) (holding that it was improper for the court to direct a client's former law firm to release papers on which it had a retaining lien before determining the value of the firm's services and assuring payment for those services).

In addition to confirming the law firm's common law right to a retaining lien, the panel also held that the lower court erred by not ordering the former client to pay the costs of reproduction and delivery of the file, citing leading New York case, *Matter of Sage Realty Corp. v. Proskauer Rose Goetz & Mendelsohn*, 91 NY2d 30, 38 (1997) (holding, *inter alia*, that the cost of assemblage and delivery of documents to the client is properly chargeable to the client under customary fee schedules).

# MOSES & SINGER LLP

Since 1919, Moses & Singer has provided legal services to diverse businesses and to prominent individuals and their families. Among the firm's broad array of U.S. and international clients are leaders in banking and finance, entertainment, media, real estate, healthcare, advertising, and the hotel and hospitality industries. We provide cost-effective and result-focused legal services in the following areas:

- Accounting Law Practice
- Advertising
- Asset Protection
- Banking and Finance
- Business Reorganization, Bankruptcy and Creditors' Rights
- Corporate/M&A
- Corporate Trust
- Equipment Lease Financing
- Family Offices
- Global Outsourcing and Procurement
- Healthcare
- Hospitality, Food Service and Restaurants
- Income Tax
- Intellectual Property
- Internet/Technology
- Labor, Employment & Employee Benefits
- Legal Ethics & Law Firm Practice
- Litigation
- Matrimonial and Family Law
- Privacy and Cybersecurity
- Private Funds
- Promotions
- Real Estate
- Securities and Capital Markets
- Securities Litigation
- Sports & Entertainment
- Trusts and Estates
- White Collar Criminal Defense and Government Investigations



Moses & Singer LLP is the New York City law firm member of the MSI Global Alliance (MSI). MSI is one of the world's leading international alliances of independent legal and accounting firms, with over 250 member firms in 100 countries - [www.msiglobal.org](http://www.msiglobal.org).

Moses & Singer LLP  
The Chrysler Building  
405 Lexington Avenue  
New York, NY 10174-1299  
Tel: 212.554.7800, Fax: 212.554.7700

2200 Fletcher Avenue  
Fort Lee, NJ 07024  
Tel: 201.363.1210, Fax: 201.363.9210  
Abraham Y. Skoff, Esq.  
Managing Attorney for New Jersey

10 Cuttermill Road – Suite 201  
Great Neck, NY 11021  
Tel: 516.498.8828, Fax: 516.498.8810  
James Alterbaum, Esq.  
Managing Attorney for Long Island

**Disclaimer**

Viewing this or contacting Moses & Singer LLP does not create an attorney-client relationship.

This does not contain a complete legal analysis or constitute an opinion of Moses & Singer LLP or any member of the firm on the legal issues herein described. This contains information that may be modified or rendered incorrect by future legislative or judicial developments. It is recommended that readers not rely on this in structuring or analyzing individual transactions or matters but that professional advice be sought in connection with any such transaction or matter.

**Attorney Advertising**

It is possible that under the laws, rules or regulations of certain jurisdictions, this may be construed as an advertisement or solicitation.

Copyright © 2015 Moses & Singer LLP, All Rights Reserved